

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

ROMEO G. PANGANIBAN,

Complainant,

and

THE JUDICIARY, State of Hawai'i,

Respondent.

CASE NO(S). 21-CE-03-957

ORDER NO. 3685

PRETRIAL ORDER AND NOTICES

- (1) NOTICE TO RESPONDENT(S) OF PROHIBITED PRACTICE COMPLAINT;
- (2) NOTICE TO PARTIES OF EXTRAORDINARY CIRCUMSTANCES
- (3) NOTICE OF FILING REQUIREMENTS;
- (4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS;
- (5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD
- (6) NOTICE OF PREHEARING CONFERENCE
- (7) NOTICE OF PRETRIAL CONFERENCE
- (8) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY
- (9) NOTICE OF HEARING ON THE MERITS; AND
- (10) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

PRETRIAL ORDER AND NOTICES

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose

appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document controls the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns include the others as the context may require.

(1) NOTICE TO RESPONDENTS OF A PROHIBITED PRACTICE COMPLAINT

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **January 12, 2021.**

PURSUANT TO HAWAII REVIS'D STATUTES (HRS) § 377-9(b) AND HAWAII ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Complaints within ten (10) days after service of the Complaints. One copy of the answer must be served on each party, and the original with certificate of service on all parties must be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, that failure constitutes an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

(2) NOTICE OF EXTRAORDINARY CIRCUMSTANCES

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai'i (Governor) issued a series of Emergency Proclamation, with the first being signed on March 5, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19.

On March 29, 2020, the Governor issued Executive Order No. 20-02, which, among other things, gave the Board the sole discretion to waive the requirement in HRS § 377-9 to hold a hearing on the complaint not more than 40 days after the filing of the complaint or amendment thereof. The Board hereby waives this requirement in this case.

Accordingly, the Board is holding remote, videographic hearings and is mandating electronic filing during the emergency period, unless terminated by separate proclamation, whichever occurs first. (See Order Nos. 3605 and 3647)

(3) NOTICE OF FILING REQUIREMENTS

1) Electronic Filing

All filings in this case must be made electronically through the Board's filing service FileandServeXpress (FSX). There is no charge to the parties for use of this electronic filing service. Should any party not have access to the Internet, or for any other concerns or complications, please contact the Board via electronic mail or (808) 586-8616.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrb/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

2) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party must make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" includes social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party must submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party must, by motion, request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), "The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document."

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear and to be represented by counsel or any other authorized person in all Board proceedings, subject to the Extraordinary Circumstances set forth in Section (2) above. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai'i building, which may not be accessible to the public during the emergency period referenced in the Notice of Receipt of Notice of Contest.

(5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD

The Board currently uses Zoom as its platform for online proceedings. The Board hereby orders all parties to follow the requirements laid out in this Order for all Remote Zoom Hearings before the Board.

Parties and representatives should familiarize themselves with Zoom in preparation for all online Board proceedings. For security purposes, the Board will utilize the "waiting room" function.

Prior to the hearing:

1. The Board will provide Zoom login information to the parties in advance of the hearing.
2. A party who shares the Zoom login information with any other group or individual (Sharing Party) must provide the Board and the other party/parties with a complete list of participants they have invited to attend the proceedings, including any support staff and witnesses. This list must be emailed to the Board at dlir.laborboard@hawaii.gov.
3. Any Sharing Party must inform non-witness participants:
 - 1) that they must keep their microphones muted at all times; and
 - 2) that they must keep their cameras off at all times.
4. Any Sharing Party must inform **all** participants:
 - 1) that they must submit their full name as their username when requesting entry to the Zoom conference, to allow the Board to ensure compliance with the witness exclusion rule, unless the party sets up a device specifically for witness use only, in which case that device may log in with the username "witness"; and

- 2) that they may not record, screen shot, record conversations, and/or use third party software to record the proceeding.

(6) NOTICE OF PREHEARING CONFERENCE

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS HEREBY GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: February 1, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference telephonically and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

(7) NOTICE OF PRETRIAL CONFERENCE

PURSUANT TO HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

NOTICE IS HEREBY GIVEN that the Board will conduct a Pretrial Conference on the date listed below and in the Schedule in this document.

DATE AND TIME: February 17, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

1) Pretrial Statement

Both the Complainant(s) and the Respondent(s) must file a Pretrial Statement with the Board as listed in the Schedule set forth below. The Pretrial Statement must include the following:

1. Statement of Issues
2. Witness List

The witness lists must include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability.

The summary for each witness must include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1). The summary, therefore, must include sufficient information to show the Board that the testimony of each witness will be different, and so the summary for each witness must be individualized.

Failure to include individualized summaries for any witness may be grounds for the Board to strike that witness and not allow them to testify at the *de novo* hearing.

The witness list must also include information regarding the location where the party expects the witness to testify from. This location may include the witness' home, a party's office, or any other location from which the witness can testify remotely, without assistance or interference from any other party, and can access the relevant exhibits.

If a party intends to file a request for a subpoena for a witness, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the witness list.

3. Exhibit List

The exhibit lists must include copies of the proposed exhibits. The parties are required to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day, as ordered in Board Order No. 3605. The exhibits must be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes, with each exhibit bookmarked.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the exhibit list.

The Complainant must identify his exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) must identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.).

If there are any duplicative exhibits, the parties must designate them as Joint Exhibits, the parties must designate one party to file these exhibits, and the Exhibits must be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

All Exhibits are to be bates-stamped in the upper right-hand corner.

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement, or any other supplemental agreement that has any bearing on these proceedings. These documents must be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc. and must be bates-stamped in the upper-right hand corner.

2) Pretrial Conference

At the pretrial conference, the Parties must be prepared to discuss, raise, and present their position regarding the presentation of the anticipated evidence (witnesses, exhibits) to be introduced at the Hearing on the Merits (HOM), including but not limited to any stipulations, evidentiary issues, objections, or confidentiality issues that require protection from public disclosure and the narrow tailoring of methods to protect that information (e.g. sealing or redaction).

While all parties have the right to appear at the Pretrial Conference and to be represented by counsel or any other authorized person, all parties are required to either appear or have a representative appear. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(8) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY

Due to the situation with COVID-19, unless otherwise ordered by the Board, all witnesses must testify videographically. Accordingly, the Board **orders all parties** to inform their witnesses that, unless otherwise directed or allowed, when the witness testifies:

1. The witness must be in a location without anyone else in the room with them, and there should be no one at the location who can overhear their testimony;
2. The device from which the witness appears must be used during the witness' testimony solely for the purpose of the witness appearing by video;
3. The witness may not consult with anyone during testimony;
4. The party calling the witness must ensure that the witness has access to all exhibits in the case;
5. The witness must not look at or make reference to notes or any other documents or materials other than the exhibits, and may look at the exhibits only when directed to do so by a party or the Board;
6. At all times while testifying, the witness must be clearly visible, face the camera, and speak directly and audibly into the microphone;
7. The witness may not use a virtual background; and
8. The witness must not have any communication with third parties while they are on the stand and under oath.

(9) NOTICE OF THE HEARING ON THE MERITS

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: February 24, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

Subject to the Board's discretion due to the Extraordinary Circumstances listed above in Section 2, all parties have the right to appear at the Hearing on the Merits and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear at the hearing on the merits.** Please note that this requirement may be altered due to the Extraordinary Circumstances listed above in Section 2 by Board Order.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(10) **SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES**

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Prehearing Conference</u>	2/1/21	9:00 a.m.
<u>Dispositive Motion Deadline</u>	2/3/21	
<u>Response to Dispositive Motion Deadline</u>	2/10/21	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	2/10/21	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	2/17/21	9:00 a.m.
<u>Hearing on the Merits</u>	2/24/21	9:00 a.m.

All submissions must be filed on or before 4:30 p.m. on the deadline date.

DATED: Honolulu, Hawai'i, _____ January 20, 2021 _____.

HAWAII LABOR RELATIONS BOARD



Thomas R. Oshiro

THOMAS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J.N. Musto

J.N. MUSTO, Member

Copies sent to:

Romeo G. Panganiban, SRL

Lori Okita, Chief Court Administrator, The Judiciary, State of Hawai'i

James Halvorson, Deputy Attorney General



EFiled: Jan 12 2021 10:32AM HAST
Transaction ID 66247683
Case No. 21-CE-03-957

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

FORM HLRB-4
PROHIBITED PRACTICE COMPLAINT

INSTRUCTIONS. Submit the original¹ of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.
-

2. COMPLAINANT Please select one that describes the Complainant:

☒ Public Employee ☐ Public Employer ☐ Public Union (public employee organization)

- a. Name, address and telephone number.

ROMEO G. PANGANIBAN
94-039 WAIPAHAU ST. #114
WAIPAHAU HI 96797

CELLPHONE 808-203-3063

-
- b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

N/A

¹ Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

3. RESPONDENT Please select one that describes the Respondent:

☐ Public Employee ☒ Public Employer ☐ Public Union (public employee organization)

a. Name, address and telephone number.

JUDICIARY, STATE OF HAWAII
777 PUNCHBOWL ST
HONOLULU HI 96813
808-539-4400

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

LORI OKITA
CHIEF COURT ADMINISTRATOR
777 PUNCHBOWL ST
HONOLULU HI 96813
808-539-4400

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

UNIT 3

5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

(5) Violate the terms of a collective bargaining agreement. [L 1970, c 171, pt of §2; gen ch 1985; am L 1992, c 214, §3; am L 2003, c 3, §2]

6. Provide a clear and concise statement of any other relevant facts.

Terminated on August 24, 2020 for complaining job promotion in a department's meeting.

Attached is a letter of dismissal

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

DECLARATION IN LIEU OF AFFIDAVIT

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- ☒ the Complainant
☐ the Complainant's principle representative
☐ the person described below

I, ROMEO GAYETA PANGANIBAN,
do declare under penalty of law that the foregoing is true and correct.

Date: JANUARY 12, 2021

The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.

meong_ruh@yahoo.com
Signor's email address

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

N/A

Your phone number: _____

Your relationship to the Complainant:

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at labor.hawaii.gov/hlrb/forms.) Email the completed form to the Board at dlir.laborboard@hawaii.gov.



EFiled: Jan 12 2021 10:32AM HAST

Transaction ID 66247683

Case No. 21-CE-03-957

First Judicial Circuit — THE JUDICIARY • STATE OF HAWAII
777 Punchbowl Street, Honolulu, Hawaii 96813-5093

Lori Ann M. Okita
CHIEF COURT ADMINISTRATOR

August 20, 2020

Mr. Romeo Panganiban
94-039 Waipanu Street #114
Waipahu, Hawaii 96797

Certified Mail Receipt #
7018 1130 0000 3499 2161

Dear Mr. Panganiban:

Your date of dismissal from your employment with the Judiciary is corrected to the close of business on August 24, 2020.

A meeting providing you an opportunity to respond to your contemplated dismissal from your Account Clerk III position with the Payables/Procurement-Family Court Unit, Fiscal Management & Support Services Branch-Kapolei, Administrative Services Division, First Circuit, was held on August 11, 2020, at approximately 9:00 a.m. via telephone. In attendance at this meeting were yourself, HGEA Union Agent Kainua Hopkins, Court Operations Specialist Lori Lee, and the undersigned.

At the meeting, you and the union provided information on your behalf.

The Union Agent pointed out that you are a very passionate person and a very passionate employee, and as a result you may be animated at times when you speak, especially when you are speaking about a topic you are passionate about. He said that while you are animated and passionate and talk with your hands a lot, you are not dangerous or a threat to any employees or co-workers that you are around.

The Union Agent said he understood that in the pre-termination hearing notice dated July 28, 2020, the allegations which were the subject of the investigation were outlined and the allegations which were investigated include allegations that you yelled at co-workers and made threatening gestures. He said that while you may have used a passionate voice, you have denied yelling at anybody.

The Union Agent said that while you allegedly made threatening gestures, the gestures you made were simply a result of your style of speaking using your hands and being a very animated and passionate person. He said the gestures were never intended to be threatening and you never intended to make anybody feel uncomfortable, and certainly not to feel threatened.

The Union Agent said he had questions about a couple of things and most of it

had to do with the FDE, Fitness for Duty Examination. He said you have not received any written correspondence regarding the FDE, so you nor the union knows the result of what the FDE was. He said the reason this is a concern is because Dr. Acklin [Dr. Marvin Acklin] who conducted the FDE told you congratulations at the end of the examination and that everything is good. He said the union and you have concerns about what the outcome of the FDE was and why the Judiciary got your medical history, especially the fact that you have not received any written correspondence or any result regarding the FDE. He asked for some insight as to what the results of the FDE were and why the employer sought permission from you for your medical history and medical records.

I clarified that the FDE is separate and apart from the investigation and the action taken did not have a bearing on results of the FDE.

The Union Agent asked if the FDE was not connected to the investigation. I confirmed it was not.

The Union Agent said that secondly, you and the union have concerns that any discipline as a result of the investigation could be construed as retaliation for you bringing up possible improprieties at your workplace, and approaching EEO. He said on September 30, 2019, you submitted a letter to Beth Tarter [EEO Officer] outlining complaints regarding treatment you received in the workplace and there is a concern that any disciplinary action taken could be construed as retaliation for submitting the letter and approaching EEO with your concerns.

The Union Agent said the union feels it is well established that discipline is meant to be corrective. He said discipline is intended to correct behavior and as a result there is a long standing history of progressive discipline, from an oral warning to a written warning to suspension, additional suspension, and then ultimately termination if the behavior is not corrected through the progressive discipline process. He said the concern in this case is that there appears to not be any attempt to correct the behavior, does not appear to be any attempt to follow progressive discipline, but rather that in this case termination is excessive because it is punitive; it is not an attempt to correct behavior. He said the union has not seen an attempt to follow progressive discipline to correct behavior, but rather punitive discipline in excessive amounts, which is the contemplated termination. He said the union feels that progressive discipline must be adhered to and as a result a written warning is appropriate in this case.

The Union Agent said the allegations are denied wholeheartedly by you. He said you did not yell at anybody, and you did not intend to make any threatening gestures at anybody.

You agreed with your Union Agent and said you are very animated. You stated you cannot speak without moving your hands, and even in your job interviews, every interview you have you are moving your hands. You said, "maybe they are not, that's why they thinking I'm a threat to them but I'm actually not. I've been here 14 years, everybody like that, they have differences, they have different gesture when they speak so I'm not a threat."

You said you thought "it's very timely because I think the FDE shouldn't be there if it's a separate one and why now during this investigation. My point of view is that you're getting my medical history. Why checking right now? I'm thinking oh this person, for example if the person is diabetic, I might say oh because of this complaint let's add this one, he has medical conditions so let's remove him." You also said, "I could say it could be one of the parts why it's concluded that you're gonna remove me. Also the FDE, I'm expecting why not you're trying to say maybe this person is insane that's why you're doing this. But he congratulated me, Dr. Acklin. And then I was thinking because I submitted a complaint to Beth Tarter, so it's some kind of retaliation for me."

You said, "This kind of meeting I had, it's a closed door meeting, it's a departmental meeting so because of the promotion, I'm just voicing out why, my sentiments, and they were telling I cannot voice out my sentiments." You also said, "Termination is because I'm voicing out my sentiments, this is what I feel. I'm just voicing out my sentiments, why and why like this. It's retaliation because after I submitted that email to Beth Tarter, Reid [Reid Iwamoto] came to me and he said 'sorry.'"

You said, "Lately because of that, he's [Reid] making me mad with all his actions. He wasn't like that. So for me it's an invitation to make me answer him back, it's very intentional. The three times he told that I'm gay. When I was at the timestamp and he told me, 'I don't know that you're gay.' All of a sudden we're there at the timestamp machine while I was doing the time stamping of the documents from the mail run. The second one was we are at the district court area. And the third one was in from of Rowena [Rowena Coronel]. I didn't ask to leave the break room because we're the only one at the timestamp machine. And the second one was with the district court clerk, I don't know he cannot speak Tagalog, it's Samoan. I believe with Rowena, she can speak Tagalog. I have to complain, she's doing it on purpose." You also said, "I believe this is a retaliation on his [Reid's] part because probably Paul Kaneshiro told him."

You said, "Also the discipline, I think it's too much because like it had to be verbal and then written, and why termination? This is what I feel is too excessive."

You said, "Reid was telling me, he's making comments to me that you can ask him, he doesn't have a bigger salary than mine. I don't know what he's talking about, 'I don't know why Romeo has a lot of money,' something like that. My bank account, I don't have money, what he's talking about. The letter I sent to you is something like that, it's very inappropriate but you can ask him personally if you're gonna conduct an investigation. Before all of this way back in 2019, he told me, 'You are the one'; I made a complaint and I see on his facial expression, 'You are the one.'" You added, "But I'm giving my explanation with anger on his face, 'You're the one, it's your mistake' or something like that."

You said, "Also Rowena is telling me that 'they are planning to terminate you. You better take care of this because there's a lot. If they wanna remove they can put you on vacation and then terminate you.' And then I said, oh it can be true, I'm thinking Rowena is an accountant and supervisor so I have a feeling every supervisor knows what is doing from one department to another. I guess this is all a plan with a recommendation because I was out of the office September 17, 2019, and then they give me the termination on August 18, a month before the 12-month period. It's not my intention not to work, I wanna work but you put me on leave. On the letter you sent to me, you're saying we believe your presence at the workplace . . . no not this one." You continued, "It should be having a verbal warning, written warning, and all of a sudden . . . it's not my intention to not work but you put me on leave, you believe on them because I questioned them. Basically why I'm not even hired as a Account Clerk IV. I've been Account Clerk II for 14 years and yet Nadine [Nadine Zane] who was not even have a degree in accounting and yet she became an accountant. I made a complaint also that how come, I talk to Reid, how come Nadine was promoted and not even probationary was completed and she's the one who hired in the Kapolei fiscal office to become the accountant. I talk to Reid, she's not even six months. But you know in the Judiciary, even though the person is not there, there were rumors she's the one who's hired." You added, "I told Reid, so lucky this girl, not even six months and she's promoted. Because I'm making complaint, they're making this thing and this issue."

You said, "But one thing for sure, this is a departmental meeting, all I know, I voice out my sentiments and the remedy. I think this is not right, that's why I feel that to give me a chance to go back. Because I been there 14 years. This is a retaliation, it's a planned thing. That's what I believe."

I have taken the Union's arguments and your statements into consideration and followed up on them.

In response to the Union's arguments that you are a very passionate person and

employee, and as a result you may be animated at times when you speak but are not dangerous or a threat to any employees or co-workers that you are around. Also, the gestures you made were simply a result of your style of speaking using your hands and being a very animated and passionate person, and were never intended to be threatening and to make anybody feel uncomfortable. You added that you cannot speak without moving your hands, and "everybody like that, they have differences, they have different gesture when they speak so I'm not a threat."

The investigation report concluded that witnesses recalled you waved your arms "wildly/violently," and pointed your finger at those present, such that all but one of those present felt threatened. Further, coworkers standing nearby you were forced to move out of your way "to avoid being hit." Further, during your interview with the investigator, you admitted you were waving your arms and that you pointed your finger, and you excused your own behavior by saying it is just the way you are, it is just the way you talk.

The Union maintained that while you may have used a passionate voice, you deny yelling at anybody. You added that you were just "voicing out my sentiments," and they [co-workers] were telling you that you cannot voice out your sentiments.

This is an unconvincing rebuttal as the investigation report concluded that: a) you were yelling at your coworkers, supervisor, and the Assistant Court Fiscal Officer, in the August 13, 2019, staff meeting held in the Assistant Court Fiscal Officer office; b) you got within inches of an Accountant's face and yelled demeaning statements at her, such as she was not qualified to be an Accountant because she did not have a degree in Accounting, and that you were more qualified for her position; c) you yelled accusations that some of the staff present at a meeting were promoted due to favoritism; d) you accused the Assistant Court Fiscal Officer of trying to fire you and yelled at the Assistant Court Fiscal Officer when you made the accusation; e) when the Assistant Court Fiscal Officer told you to calm down multiple times, you refused, and said something along the lines that you were angry and upset; f) when the Assistant Court Fiscal Officer asked the staff to leave (multiple times) a meeting, you yelled "No! You need to hear what I have to say!" or something similar, and you prevented coworkers from leaving the Assistant Court Fiscal Officer's office; and g) you put your face uncomfortably close to an Accountant's face, and accused her of conspiring against you.

The Union argued that termination is excessive because it is punitive, and there has not been an attempt to follow progressive discipline to correct behavior and the usual steps are a verbal warning, written warning and then a final written warning.

The investigation found that you were in violation of the General Guidelines of the Rules/Orders Governing Judiciary Employees. The guidelines states in relevant part: Section 1:

Treat all people in a courteous, responsive, and evenhanded manner.

The investigation found that you failed to treat Iwamoto, the Assistant Court Fiscal Officer, your coworkers, and your supervisor in a courteous, responsive, manner.

The investigation report concluded that you violated the State of Hawai'i Judiciary Violence in the Workplace Policy. The policy states in relevant part: Section 5.0 Definitions:

"Disruptive behavior" means behavior which interrupts or impedes the progress, movement, or procedure of any Judiciary employee, program, or court.

"Intimidation" means to induce fear or a sense of inferiority into another through threats, insults, or aggressive behavior.

The investigation found that you "disrupted two separate meetings being conducted by Iwamoto the Assistant Court Fiscal Officer. First when he walked in on a meeting on August 12, between Iwamoto and Zane, and again on August 13, when he disrupted the staff meeting Iwamoto was conducting. Panganiban's verbal outbursts (yelling at coworkers and his supervisor, accusing a coworker of not being qualified for her position, stating that coworkers were promoted due to favoritism, alleging Iwamoto had tried to fire him, and refusing to calm down when directed to do so) were disruptive and intimidating to those present. Further, Panganiban's aggressive physical behavior (waving/swinging his arms to the point that coworkers had to move away to avoid being hit, pointing his finger in a threatening manner, getting in the face of a coworker, and blocking the door such that he prevented coworkers from leaving the office) was also intimidating to his coworkers, and made them feel fearful and afraid." Further the investigation also found that your behavior created a contentious workplace.

Your behavior was so egregious that it warranted the disciplinary action that was taken without following each step of the progressive discipline process. Therefore, dismissal is appropriate in this case.

The Union's arguments that any discipline as a result of the investigation could be construed as retaliation for your bringing up possible improprieties at his workplace, and approaching EEO [EEO Officer Beth Tarter] is unpersuasive. She reviewed your complaints, made a determination, and forwarded your complaints to my office. I

followed up on your complaints and appropriate action was taken.

I have followed up on your statements concerning Assistant Court Fiscal Officer Reid Iwamoto and appropriate action was taken on your complaint.

I have also followed up on your statements concerning Accountant Rowena Coronel. She expressed that she did not have any discussions with you about plans to terminate you.

I have considered the information presented by the Union and yourself, along with all of the available information. Based on my review of the foregoing, I am affirming your dismissal from your employment with the Judiciary effective August 24, 2020.

Thank you for your service to the Judiciary. You may consult with your union representative on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Okita', is centered below the 'Sincerely,' text.

Lori Ann M. Okita
Chief Court Administrator

LAMO:II

c: Paul Kaneshiro, Court Administrative Services Officer
Human Resources Department
Kainua Hopkins, HGEA Union Agent